

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

FREDERICK E. HAMILTON, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil No. 97-0241-B
	)	
FRASER PAPERS, INC.,	)	
	)	
Defendant	)	

***MEMORANDUM OF DECISION***<sup>1</sup>

This action involves Plaintiffs' termination from employment with Redco, Inc. ["Redco"], a subcontractor employed at a paper mill owned by Fraser Papers, Inc [Fraser Papers]. Plaintiffs allege tortious interference with an economic relationship and both intentional and negligent infliction of emotional distress. They seek both compensatory and punitive damages. Pending before the Court is Defendant's Motion for Summary Judgment on all counts of Plaintiffs' Complaint.

***Discussion***

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

### *Statement of Facts*

Each of the Plaintiffs in this action was employed by Redco as a pipefitter at the Fraser Papers Mill in Millinocket, Maine, from July, 1996 until March, 1997. During the time of their employment at the mill, Fraser Papers had a rule that all employees of contractors and subcontractors working on the site were to use a particular parking lot ["the Aztec lot"], and were not permitted to park on public streets adjacent to the mill.<sup>2</sup>

Harold S. "Red" Hodgins, as general manager of Thomas O'Connor, Inc., the contractor employing Redco at the mill, received two directives from Fraser Papers to the effect that employees of all contractors and subcontractors were to use the Aztec parking lot as a condition of their employment at the site. Hodgins, as owner of Redco, applied the directives to Redco's employees, including Plaintiffs.<sup>3</sup>

Hodgins was informed by at least three security employees of Fraser Papers that they were displeased because Plaintiffs were parking along an adjacent street, rather than in the Aztec lot as they were instructed. On March 3, 1997, at Redco's request, the Security Chief and Manager of Safety and Training wrote a letter to Hodgins reminding Redco and other contractors that no exceptions would be permitted to the rule regarding parking for contractors' and subcontractors' employees. Hodgins directed that the letter be circulated to all Redco employees at the mill,

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<sup>2</sup> The Court does not find relevant the issue whether Fraser Papers had authority to prohibit parking on public ways.

<sup>3</sup> The Court also does not find relevant the issue whether Fraser Papers' "Contractors Manual" technically applied to Redco, which did not have a contract directly with Fraser Papers.

including Plaintiffs. The following day, Plaintiffs' vehicles were observed parked on the adjacent street. Hodgins then directed Plaintiffs be fired.

### ***Conclusions of Law***

Defendant first argues that it is entitled to judgment as a matter of law on Plaintiffs' claim that it tortiously interfered with Plaintiffs' employment relationship. The parties agree on the relevant standard: under Maine law, Defendant would be liable if it used fraud or intimidation to procure Plaintiffs' discharge from employment. *Taylor v. Pratt*, 195 A. 205, 206 (Me. 1937) (citation omitted). Plaintiffs offer no evidence of fraud, arguing that Defendant used intimidation in this case. The Court disagrees.

As Plaintiffs note, "intimidation is not restricted to 'frightening a person for coercive purposes.'" *Pombriant v. Blue Cross/Blue Shield*, 562 A.2d 656, 659 (Me. 1989) (citation omitted in original). However, under *Pombriant*, and the cases cited therein, Defendant would only be liable if its employees made clear to Hodgins that Redco would not work at the mill as long as it continued to employ these particular Plaintiffs. *Id.* It is simply not the case that "intimidation" for purposes of Maine's law regarding tortious interference occurs each time an employer enforces a work rule.

Plaintiffs have offered no evidence that Redco was told to fire Plaintiffs as a condition of its continued employment at the mill.<sup>4</sup> In fact, there is no evidence that Redco was ever told that any particular consequence would ensue if it failed to ensure its employees' compliance with Defendant's rules. That Hodgins might reasonably have been concerned that his company could lose Defendant's business does not mean that Defendant has procured Plaintiffs' terminations through intimidation.

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<sup>4</sup> Plaintiffs' assertion that the phrase "client request" on their termination notices is evidence that Fraser Papers requested their terminations is not supported by citation to the record. *See* Fed. R. Civ. P. 56(e).

Accordingly, judgment is properly granted in favor of Defendant on Plaintiffs' claims for tortious interference.

Defendant next asserts that judgment is appropriate on Plaintiffs' claims for negligent and intentional infliction of emotional distress for the reason that Plaintiffs' have not offered evidence of emotional distress severe enough to qualify under either tort. In order to prevail on their claims of intentional infliction of emotional distress, Plaintiffs are required to show that "the emotional distress suffered by [them] was 'severe' so that 'no reasonable man could be expected to endure it.'" *Vicnire v. Ford Motor Credit Co.*, 401 A.2d 148, 154 (Me. 1979) (citation omitted).<sup>5</sup> Plaintiffs' claims of negligent infliction of emotional distress likewise require a showing that "'a reasonable person normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the event.'" *Rowe v. Bennett*, 514 A.2d 802, 805 (Me. 1986) (citation omitted). The emotional distress described in Plaintiffs' Statement of Disputed Facts, such as sleepless nights, depression, and irritability, does not rise above the level expected of persons who experience a loss of employment. It certainly does not amount to that level of distress necessary to prevail on these claims.

In addition, Defendant correctly argues that Plaintiffs' claims for negligent infliction of emotional distress fail in the absence of an underlying tort. *Rowe*, 514 A.2d at 806. In light of our conclusion that Defendant is entitled to judgment as a matter of law on Plaintiffs' tortious

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<sup>5</sup> While it is also true that severe emotional distress may be inferred from conduct that is "'extreme and outrageous,'" *Vicnire v. Ford Motor Credit Co.*, 401 A.2d 148, 154 (Me. 1979) (citation omitted), the record does not support this inference for the reasons stated in the discussion of Plaintiffs' claims for tortious interference with an economic relationship.

interference claims, judgment is properly entered in Defendant's favor on the negligent infliction claims as well.

Finally, Defendant seeks judgment as a matter of law on Plaintiffs' requests for punitive damages. The Court agrees that judgment should enter on these claims for the reasons stated in connection with the substantive claims.

***Conclusion***

Accordingly, Defendant's Motion for Summary Judgment is hereby GRANTED in its entirety. Judgment shall enter in favor of Defendant as against all named Plaintiffs on all counts of Plaintiffs' Complaint.

***SO ORDERED.***

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Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated on April 28, 1998.